

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

JOANN JOHNSON,

Appellant,

v.

COLUMBIA BASIN COLLEGE,

Respondent.

) Case No. RIF-00-0012

)
) FINDINGS OF FACT, CONCLUSIONS OF
) LAW AND ORDER OF THE BOARD

)
) **CORRECTED COPY**

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair, and GERALD L. MORGEN, Vice Chair. The hearing was held at the Columbia Basin College, Administrative Building, Pasco, Washington, on August 21, 2001. LEANA D. LAMB, Member, reviewed the record, including the file, exhibits, and the recorded proceedings, and participated in the decision in this matter.

1.2 **Appearances.** Appellant JoAnn Johnson was present and was represented by Mark Lyon, General Counsel for the Washington Public Employee Association. Assistant Attorney General, Patricia Thompson, represented Respondent Columbia Basin College.

1.3 **Nature of Appeal.** This is an appeal from a reduction in force due to a lack of funds.

1.4 **Citations Discussed.** WAC 358-30-170; 251-01-415; 251-04-030; WAC 251-10-030; O’Gorman v. Central Washington University, PAB No. L93-018 (1995).

II. FINDINGS OF FACT

2.1 Appellant JoAnn Johnson is a halftime Office Assistant II and permanent employee for Respondent Columbia Basin Community College. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 251 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on June 20, 2000.

2.2 Appellant began her employment with the Columbia Basin College (College) as an hourly employee in October 1994. On August 1, 1995, Appellant was hired as a halftime Office Assistant II (OA2). Appellant completed her probationary period and she gained permanent civil service status in February 1996. On July 1, 1996, Appellant's halftime OA2 position became a fulltime position.

2.3 By letter dated December 6, 1999, the College informed Appellant that the work hours of her OA2 position would be reduced to halftime because of a lack of work. However, the College subsequently appointed Appellant to a fulltime position as Teaching Aid I (TA1) effective December 22, 1996.

2.4 Appellant's TA1 position was assigned to work at the Coyote Ridge Corrections Center (CRCC) as part of a "contractual arrangement" between the College and the Department of Corrections (DOC). The arrangement called for the College to provide educational programs for inmates at the CRCC. DOC provided 100 percent of the funding for the program. The direction of the educational program and any decisions related to expenditures of the budget came from DOC through the superintendent of CRCC.

1 2.5 Gary Isakson, an employee of the College, is the Education Director of the CRCC Education
2 Program. Mr. Isakson is responsible for managing the program's budget. Mr. Isakson receives
3 direction from DOC regarding the education program budget, and he is the primary liaison between
4 the College and DOC/CRCC.

5
6 2.6 When Appellant began her duties at the CRCC, the College was authorized to utilize funds
7 for both instructional and administrative staff. Appellant's TA1 position was characterized as an
8 administrative "services" position. For Fiscal Year (FY) 98-99, the College received a total of
9 \$342,071 to support the educational program.

10
11 2.7 Effective July 16, 1999, the College reduced Appellant's fulltime TA1 position at CRCC to
12 a halftime position and placed her in a second halftime Office Assistant II position assigned to work
13 in the College's Workfirst Program on campus. Appellant suffered no economic loss as a result of
14 working the two halftime positions. The halftime TA1 salary continued to be funded by
15 DOC/CRCC, while the College funded the halftime OA 2 position.

16
17 2.8 In FY 99-00, the CRCC inmate population increased by 500 inmates and the institution
18 allocated \$337,508 to fund the education program. In late 1999, DOC instructed the College to
19 emphasize classroom instruction, decrease funds used for administrative services, and increase the
20 number of instructors for FY 99-00.

21
22 2.9 In FY 00-01, DOC/CRCC allocated \$376,496 to the inmate education program. At this
23 time, DOC directed the College to cease using funds to pay for "services" and to apply all funds to
24 hire additional instructors to increase inmate instruction.

1 2.10 To meet the terms of DOC's new direction, Mr. Isakson recommended to Lee Thornton,
2 President of the College and Appellant's appointing authority, the elimination of Appellant's
3 halftime TA1 position at the CRCC.

4
5 2.11 Mr. Thornton subsequently reviewed DOC/CRCC's change in program direction and its
6 decision to cease using the program's funds for the services budget. Mr. Thornton concurred with
7 Mr. Isakson's proposal to eliminate the halftime TA1 position, and he authorized the reduction in
8 force due to a lack of funds.

9
10 2.12 The College's approved Layoff Procedure establishes the order in which its employees are
11 to be laid off: 1) Emergency, temporary or intermittent employees; 2) Provisional or probationary
12 employees; and 3) Permanent status employees.

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14
15 2.13 On May 19, 2000, Cindy Bell, Appellant's shop steward, requested a position description
16 for a teaching aid position held by employee Cynthia Risk in the Business Technology division.
17 Ms. Bell was in the process of determining whether the position could be a possible option for
18 Appellant in lieu of layoff. Sometime that day, Ms. Risk's supervisor and Ruben Lemos, Associate
19 Dean for Human Resources, discussed Ms. Risk's position classification and the possibility of
20 reclassification.

21
22 2.14 By letter dated May 19, 2000, Mr. Lemos authorized the reallocation of Ms. Risk's position
23 to a halftime Teaching Aid II and halftime Office Assistant III. The reallocation became effective
24 May 22, 2000.

1 2.15 Mr. Lemos was also responsible for reviewing Appellant's employment history to determine
2 her layoff options. Mr. Lemos reviewed classified positions in the Office Assistant class series in
3 which Appellant held status. However, Mr. Lemos found no positions available at the Office
4 Assistant I or II level. Mr. Lemos also concluded that Appellant's halftime TA1 position was the
5 only halftime Teaching Aid I position at the College until its elimination, and therefore, there were
6 no other viable positions at the same classification. Mr. Lemos concluded that no other positions
7 were available to Appellant.

8
9 2.16 By letter dated May 23, 2000, Mr. Thornton notified Appellant that her "50 percent"
10 Teaching Aid I position at the CRCC was being reduced in force due to a lack of funds. Mr.
11 Thornton informed Appellant that her layoff would become effective on June 30, 2000 and that
12 Appellant could continue to work in the "50 percent" Office Assistant II position and be placed on
13 the College's institution-wide layoff list for the next vacant Teaching Aid I or Office Assistant II
14 position.

15
16 2.17 The College employs both temporary and student employees to perform a variety of office
17 support functions. Priscilla Perez is employed by the College as an "hourly temporary" employee.
18 Ms. Perez works approximately 15 hours per week in the Workfirst office. Ms. Perez is limited to
19 working 1050 hours in any 12-month period. Appellant and Ms. Perez perform substantially the
20 same duties and responsibilities within the Workfirst office. Both Appellant's OA2 position and
21 Ms. Perez' positions were funded from the same budget code: 145.111.1.

22
23 2.18 By letter dated June 1, 2000, Appellant wrote to Mr. Lemos and asserted that she was
24 entitled to the work hours held by temporary employee Priscilla Perez and the hours proposed for
25 Gaylynn McKeen, a student worker. On June 27, Mr. Lemos responded to Appellant's letter,
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1 stating “both of these positions are exempted from coverage of the WAC 251 chapter (sic) and thus
2 not available as bumping options for you.”

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4 2.19 On June 20, 2000, Appellant filed an appeal of her layoff.

5 6 **III. ARGUMENTS OF THE PARTIES**

7 3.1 Respondent argues that Appellant was laid off due to a lack of funds and that the only option
8 available to her was to remain in her 50 percent Office Assistant II position. Respondent asserts
9 that temporary positions exempt under WAC 251-040-040(6), are not “temporary employees” for
10 purposes of administering a layoff under WAC 251-10-030, and therefore, were not appropriate
11 layoff options for Appellant. Respondent also asserts student worker positions are exempt and
12 therefore, were not appropriate options to be offered to Appellant. Respondent asserts that Ms.
13 Risk’s position prior to reclassification was not a comparable position and would also not have been
14 an option for Appellant.

15
16 3.2 Appellant asserts that Respondent failed to prove that a lack of funds existed because the
17 inmate education program budget continued to increase. Appellant contends that she was laid off
18 for a lack of work, not a lack of funds. Appellant argues that Respondent failed to offer her layoff
19 options of positions held by temporary employees as required by WAC 251-10-030(5). Appellant
20 disputes that positions exempt under WAC 251-04-040 are beyond the scope of the required layoff
21 procedures. Appellant contends that Respondent continued to employ temporary and student
22 employees who performed work she was qualified to perform. Appellant questions the reallocation
23 of Ms. Risk’s position so shortly after her union representative inquired into it and asserts that the
24 position was comparable.

IV. CONCLUSIONS OF LAW

4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter herein.

4.2 Respondent may layoff an employee for lack of funds or lack of work. WAC 251-10-030(1). In an appeal of a layoff or reduction-in-force action, Respondent has the burden of proof. WAC 358-30-170. Respondent has the burden of proving by a preponderance of the credible evidence that it laid the employee off for the reasons stated in the RIF letter. O’Gorman v. Central Washington University, PAB No. L93-018 (1995).

4.3 The first issue presented here is whether Respondent complied with WAC 251-10-030(1) when it laid off Appellant because of a lack of funds. WAC 251-10-030(1) permits an appointing authority to layoff or reduce the number of working hours or the work year of an employee, in part, because of a lack of funds. Respondent provided credible evidence that substantial changes were made in the terms of the “contractual agreement” between the DOC/CRCC and the College. In the unique situation here, the College proved that a lack of funds existed which supported the decision to eliminate Appellant’s halftime TA1 position at the CRCC.

4.4 The second issue presented is whether Respondent provided Appellant with appropriate layoff options as required under the higher education rules. WAC 251-10-030(4) provides, in part:

Within the layoff unit, a permanent status employee scheduled for layoff shall be offered employment options to position(s):

- (a) For which he/she meets any specific position requirements;
- (b) Which are comparable, as determined by the personnel officer; and
- (c) Which are in:

- (i) Class(es) in which the employee has held permanent status which have the same or lower salary range maximum as the current class;

- (ii) Lower class(es) in those same class series for which the employee is qualified.

1 The employee may exercise either option subsection (4)(c)(i) or (ii) of this section
2 provided that the employee being replaced is the least senior in a comparable
3 position in the class and has less layoff seniority than the employee replacing
4 him/her. . . .

5 Respondent correctly determined that Appellant had no layoff options under subsection (4) of the
6 rule.

7 4.5 Since Appellant had no layoff options to other permanent positions, the question becomes
8 whether the College offered other positions as required by WAC 251-10-030(5), which states, in
9 part:

10 . . . a permanent employee scheduled for layoff who has no options available under
11 subsection (4) of this section shall be offered position(s) as follows:

12 (a) The personnel officer will offer in writing not less than three positions from
13 among the highest available classes (unless the total available is less than three);
14 provided that any position(s) offered must be:

15 (i) At the same level or lower than the class from which the employee is being laid
16 off; and

17 (ii) Vacant or held by a provisional, temporary, or probationary employee; and

18 (iii) In a class for which the employee being laid off meets the minimum
19 qualifications and can pass the appropriate qualifying examination.

20 (Emphasis added).

21 4.6 Respondent urges the Board to read the plain language of subsection (5)(a) to exclude
22 positions held by employees who are exempt from the higher education personnel rules. A
23 distinction exists under those rules between the status of individual employees and the positions in
24 which they are employed. WAC 251-04-040(6) provides that a person employed to work 1050
25 hours or less is exempted from coverage under the provisions of Chapter 251 WAC. As such,
26 temporary employees working less than 1050 hours are not entitled to the benefits or protection of
the higher education personnel rules. Individuals employed to work fewer than 1050 hours are
temporary employees that are not entitled to receive sick or annual leave, paid holidays, health
insurance, retirement credit or the benefit of continuing employment. However, WAC 251-10-

1 030(5) clearly provides that positions held by temporary employees must be offered when a
2 permanent employee scheduled for layoff has no options available under subsection WAC 251-10-
3 030(4).

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5 4.7 WAC 251-01-415(2) defines a temporary appointment as the “performance of work which
6 does not exceed one thousand fifty hours in any twelve consecutive month period from the original
7 date of hire ...” The position held by Priscilla Perez is, as defined by this provision, a temporary
8 appointment and is subject to consideration as an employment option for Appellant. Ms. Perez’
9 status does not remove her position from consideration.

10
11 4.8 Respondent failed to meet its burden of proving that it complied with the provisions of
12 WAC 251-10-030(5). Respondent failed to offer Appellant work that was clearly comparable and
13 being performed by a temporary employee. We conclude that positions exempt under WAC 251-
14 04-040(6) are not beyond the reach of WAC 251-10-030. Even though the incumbent in a 1050
15 temporary position is exempt from most provisions of the higher education rules, the work
16 performed is not exempt from being offered as an employment option to a permanent employee at
17 risk of being laid off.

18
19 4.9 Finally, the sequence of events regarding Ms. Risk’s reallocation give the strong appearance
20 that this position may have been reallocated in response to inquiries made by Appellant’s union
21 representative. The record is not clear as to whether the position would have been a viable layoff
22 option for Appellant. However, to ensure that upward reallocation of the position (to classifications
23 not previously held by Appellant) was not done to circumvent the need to offer the position as a
24 possible layoff option to Appellant, we are directing Respondent to review the position and
25 determine whether Ms. Risk’s position, as classified prior to May 19, 2000, could have been an
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1 employment option for Appellant in lieu of layoff. If so, Respondent must comply with the
2 requirements of WAC 251-10-030 and provide Appellant with appropriate layoff options.

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4 **V. ORDER**

5 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of JoAnn Johnson is granted, in
6 part, and Respondent is ordered within 30 days of this order to:

- 7
- 8 • Comply with the provisions of WAC 251-10-030(5) and offer Appellant any options at the
9 same level or lower than the class from which she was laid off which were held by
10 provisional, temporary or probationary employees and in classes for which she meets the
11 minimum qualifications and can pass the appropriate qualifying examinations. Any
12 temporary positions reviewed and/or offered shall include the position filled by Ms. Perez
13 and any other positions filled by temporary employees working 1050 hours or less.
 - 14 • Review Ms. Risk's position and determine whether the position, as classified prior to
15 May 19, 2000, could have been a viable employment option for Appellant in lieu of layoff.
16 If so, Respondent is ordered to comply with the requirements of WAC 251-10-030 and
17 provide Appellant with appropriate layoff options.
 - 18 • Reinstatement Appellant, effective July 1, 2000, in an appropriate position in compliance with
19 this order, with all rights and benefits including back pay, sick leave, vacation leave accrual,
20 and retirement and OASDI credits.

21 DATED this _____ day of _____, 2001.

22
23 WASHINGTON STATE PERSONNEL APPEALS BOARD

24 _____
25 Walter T. Hubbard, Chair

26 _____
Gerald L. Morgen, Vice Chair

Leana D. Lamb, Member